

APPEAL NO. 022832
FILED DECEMBER 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 7, 2002. The hearing officer determined that the appellant (claimant) sustained a compensable injury on _____, in the form of a small cut on his lower jaw and on the back of his head, but that he failed to show a causal relationship between the bulges in his discs at L3-4 and L4-5 or the herniated disc at L5-S1 and the incident of _____. The hearing officer additionally determined that the claimant did not have disability resulting from the compensable injury. The claimant appealed, asserting that he presented sufficient evidence to show that he did sustain a compensable injury to his lumbar spine and that he did have disability. The respondent (carrier) responded objecting to certain documents attached to the claimant's appeal, and otherwise urging affirmance.

DECISION

We affirm.

The claimant attached a note he had handwritten and a letter from his treating doctor dated November 5, 2002, to his appeal that were not offered at the hearing. We will not generally consider evidence submitted for the first time on appeal. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that a case be remanded for further consideration, we consider whether it came to the appellant's knowledge after the hearing, whether it is cumulative, whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). The letter from the claimant's treating doctor attached to his appeal could have been secured through diligence prior to the hearing. Consequently, we will not consider it for the first time on appeal. Regarding the claimant's handwritten note, we regard it as no more than an expansion of the claimant's position on appeal and will treat it as such.

The claimant had the burden to prove that he sustained a compensable injury, and that it resulted in disability. There is conflicting evidence in this regard. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by medical evidence where the credibility of that evidence is manifestly dependent upon the credibility of the information imparted to the doctor by the claimant. Rowland v. Standard Fire Ins. Co., 489 S.W.2d 151 (Tex. Civ.

App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's determinations are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**MARCUS CHARLES MERRITT
6600 CAMPUS CIRCLE DRIVE EAST
IRVING, TEXAS 75063.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Robert W. Potts
Appeals Judge